

Message Text

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SUBJ: COURT APPEARANCE OF SMUN SECOND SECRETARY

1. DEPT OF JUSTICE HAS REQUESTED DEPT TO APPROACH SOVIETS AGAIN TO SEEK COURT APPEARANCE OF SMUN SECOND SECRETARY KOSENKOV, WHO WAS VICTIM AND ONLY EYE WITNESS IN ASSAULT INCIDENT EARLIER THIS YEAR IN NEW YORK.

2. JUSTICE POINTS OUT THAT PROSECUTION WITHOUT VICTIM'S TESTIMONY IN SUCH CASES IS VIRTUALLY UNHEARD OF, AND IN PRESENT CASE KOSENKOV'S ABSENCE COULD ALLOW ACCUSED TO FABRICATE CLAIM OF SELF-DEFENSE. JUSTICE FEELS THAT WITHOUT KOSENKOV'S TESTIMONY NEW YORK JURY HIGHLY UNLIKELY TO CONVICT PERPETRATORS.

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3. DEPT WILL DISCUSS PROBLEM AGAIN WITH SOVIET EMBASSY

AND URGE THAT KOSENKOV BE AUTHORIZED TO TESTIFY. MISSION REQUESTED TO RAISE MATTER AGAIN WITH SMUN.

4. MISSION MAY DRAW UPON FOLLOWING TALKING POINTS:

(A) MITCHELL REIN AND ZELIG SPIRN WERE INDICTED BY

FEDERAL GRAND JURY, SOUTHERN DISTRICT OF NEW YORK, IN OCTOBER 1973 FOR ASSAULT ON SMUN SECOND SECRETARY KOSENKOV;

(B) INDICTMENT IS MANIFESTATION OF USG'S CONTINUING EFFORT TO ASSURE SAFETY OF SOVIET PERSONNEL BY BRINGING TO JUSTICE THOSE WHO HAVE HARASSED AND ASSAULTED SOVIET OFFICIALS;

(C) ALTHOUGH OUR LEGAL SYSTEM DOES NOT REQUIRE EVIDENCE FROM VICTIM, UNDER US TRIAL PROCEDURES JURY UNLIKELY TO CONVICT REIN AND SPIRN UNLESS KOSENKOV TESTIFIES -- HIS FAILURE TO APPEAR COULD, FOR EXAMPLE, ALLOW REIN AND SPIRN TO CLAIM SELF-DEFENSE;

(D) US ATTORNEYS WOULD RESIST VIGOROUSLY ANY EFFORT BY DEFENSE TO EMBARRASS KOSENKOV AND WOULD BE GLAD TO DISCUSS ANY OTHER ASPECTS OF CASE WITH SOVIET SIDE;

5. SHOULD SOVIETS CITE THEIR UNHAPPY EXPERIENCE WITH COURT APPEARANCE OF TASS CORRESPONDENT BASKAKOV IN 1971, MISSION SHOULD POINT OUT THAT:

(A) TASS CASE WAS HEARD IN NEW YORK CITY CRIMINAL COURT, WHILE KOSENKOV CASE WILL BE HELD IN MORE DECOROUS FEDERAL COURT;

(B) TASS CASE INVOLVED VIOLATION OF NEW YORK CITY LAW, WHILE PRESENT CASE INVOLVES VIOLATION OF UNITED STATES CODE (PL 92-539, PROTECTION OF FOREIGN OFFICIALS);

(C) KOSENKOV CASE IS FIRST INVOLVING SOVIET VICTIM TO BE TRIED IN NEW YORK UNDER PL 92-539; USG CONCERNED THAT FAILURE TO WIN CONVICTION COULD SET UNFORTUNATE LIMITED OFFICIAL USE

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PRECEDENT, AND SUCCESS OF GOVERNMENT'S CASE DEPENDS LARGELY UPON KOSENKOV TESTIMONY.

6. CONTACT IN US ATTORNEY'S OFFICE, SOUTHERN DISTRICT, IS CHIEF OF CRIMINAL DIVISION THOMAS D. EDWARDS. MISSION MAY WISH TO CONSULT EDWARDS REGARDING ADVISABILITY OF HAVING HIM OR HIS REPRESENTATIVE ATTEND USUN'S MEETING WITH SMUN ON THIS MATTER. KISSINGER

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